



5 August 2021

Ms Philippa Lynch PSM  
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Via email: [philippa.lynch@hcourt.gov.au](mailto:philippa.lynch@hcourt.gov.au)

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Senator the Hon Michaelia Cash, Attorney-General,  
[attorney@ag.gov.au](mailto:attorney@ag.gov.au); [DLO@ag.gov.au](mailto:DLO@ag.gov.au)

Dear Ms Lynch,

**High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021 [F2021L00391]**

Thank you for your letter of 12 July 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument. The committee considered your letter at its private meeting on 4 August 2021.

The committee thanks you for your advice in relation to examples of factors that would be considered when determining whether an individual has acted in a disorderly or offensive manner or created any nuisance, such as whether behaviour impedes access to the Court or has the potential to cause harm. Your letter provided examples of behaviour that is proscribed such as making physical threats to staff or smashing the exterior glass of the building.

The committee also acknowledges your advice that celebrations or protests which do not impede access to or impact on proceedings, or cause damage to the building, would not be likely to be considered such behaviour.

While the committee welcomes the additional information provided in your letter, from a scrutiny perspective, the committee considers that it would be appropriate for the instrument to be amended to set out the factors that would be taken into account in determining whether an individual has acted in a disorderly or offensive manner or created any nuisance.

The committee would therefore appreciate your advice as to whether the instrument could be amended to:

- set out the factors that would be taken into account in determining whether an individual has acted in a 'disorderly or offensive manner' or created 'any nuisance' within the building or the precincts; and

- clarify that celebrations or protests which do not impede access to or impact on proceedings, or cause damage to the building would not be likely to be considered conduct falling within either paragraph 5(i) or 5(xii).

Please note that as the 15<sup>th</sup> sitting day after the instrument was tabled in the Senate is 11 August 2021, in accordance with its usual practice, the committee intends to give a notice of motion to disallow the instrument on that day as a precautionary measure to allow an additional 15 sitting days for the committee to consider further information received in relation to the instrument. Once the committee has satisfactorily concluded its consideration of the instrument the committee will be in a position to give notice of its intention to withdraw the disallowance notice.

Noting this, the committee would appreciate receiving further advice in relation to this matter by 19 August 2021, although please contact the committee's secretariat to discuss this timeframe if required.

Finally, please note that, in the interests of transparency this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au).

Thank you in advance for your continued assistance with this matter.

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**